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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 15th November, 2022

Decided on: 25th January, 2023

+ **W.P.(CRL) 2802/2019**

ASHISH CHAUHAN

..... PETITIONER

**Through: Mr. Vikas Pahwa, Sr. Advocate
with Mr. Sumer Singh Boparai,
Mr. Sidhant Saaswat, Ms. Manisha
Jain, Mr. Rohan Wadhwa,
Advocates.**

V

STATE (GOVT. OF NCT OF DELHI) & ANR

..... RESPONDENTS

**Through: Mr. Amol Sinha, ASC with
Mr. Kshitiz Garg, Advocate for
State with SI Mukesh Kumar, P.S.
V. K. (North).**

+ **W.P.(CRL) 3005/2019 & CRL.M.A.3961/2020**

SURAJIT CHATTERJEE

..... PETITIONER

Through: Ms. Sonal Chauhan, Advocate

V

STATE & ANR.

..... RESPONDENTS

**Through: Mr. Amol Sinha, ASC with
Mr. Kshitiz Garg, Advocate for
State with SI Mukesh Kumar, P.S.
V. K. (North).**

CORAM
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. This common judgment shall decide petitions bearing no. W.P.(CRL) 2802/2019 filed on behalf of the petitioner/Ashish Chauhan and W.P.(CRL) 3005/2019 filed on behalf of the petitioner/Surajit Chatterjee under Article 226 of the Constitution read with section 482 of the Code of Criminal Procedure (hereinafter referred to as “**the Code**”) for quashing of FIR bearing no. 594/2018 dated 01.12.2018 registered under sections 354A/506 IPC, 1860 at P.S. Vasant Kunj (North) District South -West, New Delhi along with consequential proceedings arising out of the said FIR.

2. The perusal of FIR reflects that it was got registered on account of DD No. 26B dated 01.12.2018 lodged by the respondent no.2 regarding the sexual harassment at workplace i.e. Head Office, Maruti Suzuki India Limited (MSIL) and threat to the safety and life of the respondent no.2. The respondent no.2 stated that she is a lawyer by profession and worked as a trainee at Head Office, Maruti Suzuki India Limited, Vasant Kunj till August, 2018. The respondent was sexually harassed by the petitioner/Ashish Chauhan, Archit Ashwani and Surajit Chatterjee (petitioner in W.P.(CRL) 3005/2019) of the legal team. The

petitioner/Ashish Chauhan and Archit Ashwani have been involved in harassing the trainees earlier sexually as well as work related harassment but their acts have been covered up by the superior officers repeatedly without taking any action against them. The respondent no.2 raised the complaint regarding the harassment meted out to her initially with Shri Lokesh Pandey, Department Manager but no action was taken by him and thereafter, the respondent no.2 took up the matter with Ms. Manjree Choudhary, Division Head but she made clear to the respondent no.2 that the management would not take any action against their permanent employees and the respondent no.2 was asked to leave the job. The complaint of the respondent no.2 was not referred to the Sexual Harassment Committee by Mr. Pandey and Ms. Manjree rather the respondent no.2 was forced to quit job before the completion of her tenure.

2.1 The respondent no.2 discussed the issue with Mr. Brijesh Choudhary and Mr. Gaurav Kaushik of the legal team. The respondent no.2 on 31.10.2018 got a call from Ms. Manju who informed that she is handling the Sexual Harassment Committee for MSIL. The respondent no.2 also received a call from Ms. Aarti to whom the respondent no.2 narrated the entire harassment but no action was contemplated to be taken against the

offenders.

2.2 The petitioner/Ashish Chauhan used to stare at respondent no. 2 in a sexually offending manner by making gestures at her and used to talk with Archit and Ashwani by using abusive language and lewd comments about dressing and physical aspects of the respondent no.2. Archit Goswami many a times also tried to touch the respondent no.2 inappropriately and held her hand without her consent and also asked the respondent no.2 to come to his house for drinking.

2.3 An unknown person on 05.11.2018 at about 05:00 pm came to the PG Hostel of the respondent no.2 and asked about her details like home address, timings, etc. but did not disclose his identity. The respondent no.2 was not present at PG Hostel at that time on that day and came to know about the visit from the owner of the PG Hostel. The respondent no.2 immediately called up Mr. U. K. Sharma, Admin Head of the Maruti who was also aware about harassment caused to the respondent no.2. On 06.11.2018, another person came posing himself as a clerk from a lawyer's office to the house of the sister of the respondent no.2 situated at Dwarka and tried to know the details of the respondent no.2.

2.4 The respondent no.2 thereafter called up Ms. Manju and Ms. Aarti

who confirmed that none from the MSIL was sent to the place of the respondent no.2. The respondent no. 2 left PG hostel on 30.11.2018 and was looking for an auto for office then one person started to chase her and stared her weirdly. The respondent no.2 apprehended about her life and no action has ever been taken on the basis of the complaint. Thereafter, on the basis of the complaint, the present FIR under sections 354A/506 IPC was got registered.

3. The petitioner/Ashish Chauhan in W.P.(CRL) 2802/2019 stated that he is a Law Graduate and working as an in-house Counsel (Manager - Legal and Special Projects) with Maruti Suzuki India Limited at Head Office, Vasant Kunj, New Delhi and is associated with the company for more than 11 years. The respondent no. 2 was temporarily inducted as an intern/trainee in Legal Department-2 (Litigation Team) and interned for an approximate period of 10 months.

3.1 The present FIR was got registered on the basis of a bogus and false complaint lodged by the respondent no.2 with a malicious intention to harass the petitioner/Ashish Chauhan and tarnish his reputation. No *prima facie* case for the offences punishable under sections 354A/506 IPC is made out qua the petitioner. The Police have not submitted any charge-sheet after

conclusion of the investigation.

3.2 The Internal Complaints Committee, MSIL constituted under the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013, received a complaint in the form of FIR on 04.12.2018. Thereafter, a detailed and exhaustive inquiry was conducted. The Internal Complaints Committee has categorically examined the allegations made in the FIR and thereafter vide Final Report dated 19.08.2019 exonerated the petitioner from all the charges and allegations levelled by the complainant/respondent no.2.

3.3 The petitioner/Ashish Chauhan stated that Surender Kumar, Advisor Legal Department-2 orally instructed the petitioner/Ashish Chauhan to accommodate the respondent no.2 as a legal intern/trainee for some time. The respondent no.2 sent an e-mail along with her resume to the petitioner/Ashish Chauhan on 06.09.2017 requesting to join as an intern in the organization. The respondent no.2 vide an e-mail dated 07.09.2017 was asked to join for the training w.e.f. 18.09.2017. The working atmosphere of the MSIL was explained to the respondent no.2 and was categorically informed that she would only be working as an intern/trainee for a few months.

3.4 Surender Kumar attached the respondent no.2 with Surajit Chatterjee, Deputy Manager, Legal Department-2 (petitioner in W.P.(CRL)3005/2019) who used to exclusively handle the labor (IR) matters/litigation in various Courts of Gurugram under the guidance/supervision of Surender Kumar. Surender Kumar also asked the respondent no.2 to support/assist Surajit Chatterjee (petitioner in W.P.(CRL)3005/2019) in the labour/IR matters and research work. The respondent no.2 also used to attend the Courts and briefing sessions at the office of the standing counsel(s) of the company for labour/ IR matters at Gurugram and Delhi under the guidance of Surajit Chatterjee (petitioner in W.P.(CRL)3005/2019) and Surender Kumar. The respondent no.2 was also provided with an individual official laptop, e-mail, internet facility and was given stipend for a sum of Rs. 15,000/- per month besides other facilities. The petitioner/Ashish Chauhan never handled the labour/IR matters as such the respondent no.2 never worked or got associated with the petitioner/Ashish Chauhan. The petitioner/Ashish Chauhan has regularly travelled out of station for official work during the period from October to December, 2017 for official assignment.

3.5 The company has an open workplace culture and CCTV cameras were installed everywhere. The petitioner/Ashish Chauhan neither made any

phone call to the respondent no.2 nor even sent any inappropriate message during or after the training/internship of the respondent no.2. The petitioner/Ashish Chauhan was transferred to work directly with Executive Director – Legal and General Counsel of MSIL on 03.04.2018. The internship/training of the respondent no.2 got concluded in the month of August, 2018 and during this period she never made any complaint or raised any issue qua the petitioner/Ashish Chauhan.

3.6 The respondent no.2 vide e-mail dated 23.08.2018 requested the Department Head to clear the dues and issue the certificate and even then the respondent no.2 did not mention any grievance against the petitioner/Ashish Chauhan. The respondent no.2 was issued a training completion certificate dated 31.08.2018 by the Litigation Head of Legal Department-2, which was duly received by the respondent no.2 without any protest.

3.7 An anonymous complaint was filed on 20.10.2018 at the National Commission of Women against the petitioner/Ashish Chauhan and other employees of MSIL wherein it was alleged that the petitioner/Ashish Chauhan along with other employees sexually harassed the respondent no.2 and the said complainant was filed maliciously in order to harass the petitioner/Ashish Chauhan. The Chairman, MSIL also received an

anonymous e-mail 20.10.2018 on similar lines by the respondent no.2. MSIL received a letter from the National Commission for Women (NCW) on 28.11.2018 regarding the aforesaid complaint. The respondent no.2 on 01.12.2018, in connivance with ex-employees/employees of the Company registered a false FIR bearing no. 594/2018 under sections 354A/506 IPC.

3.8 The Internal Complaints Committee of MSIL was constituted on the basis of said FIR under the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 and thereafter after taking cognizance, necessary enquiry was initiated.

3.9 The respondent no.2 was asked to appear before the Committee on 08.12.2018 but she did not appear. The petitioner/Ashish Chauhan on 25.12.2018 submitted a representation to the concerned I.O., P.S. Vasant Kunj (North) for participation in the investigation and denied all the allegations.

3.10 The respondent no.2 also filed a complaint on 04.01.2019 before the Delhi Commission for Women. The respondent no.2 appeared before the Internal Complaints Committee on 10.01.2019 and denied sending the anonymous e-mails to the Chairman, MSIL and the complaint to NCW and has also denied having written anonymous complaint dated 20.10.2018. The

petitioner also submitted written reply along with documents before the Internal Complaints Committee on 14.03.2019. The respondent no.2 withdrew the complaint against the petitioner before the Internal Complaints Committee on 07.05.2019 and other authorities but the Internal Complaints Committee proceeded with the enquiry and decided the matter on merits. The Internal Complaints Committee after an exhaustive and detailed enquiry exonerated the petitioner along with other employees of the company vide Final Report dated 19.08.2019. The Internal Complaints Committee observed that there is an open workplace and also concluded that the respondent no.2 has not been able to establish any case of sexual harassment against the petitioner and others. It is prayed that the present petitions be allowed and FIR bearing no. 594/2018 be quashed.

4. The petitioner/Surajit Chatterjee in petition bearing no.W.P.(CRL)3005/2019 stated that he is a law graduate from West Bengal National University of Juridical Sciences and joined MSIL as Deputy Manager in its Legal Department on 07.11.2014 and left the company on 20.06.2018. The petitioner/Surajit Chatterjee was handling high stake industrial dispute/labour matters and related advisory.

4.1 The respondent no.2 joined the company as 'trainee' on

recommendation of Surender Kumar Kataria, the then Advisor Legal Department on 18.09.2017. The respondent no.2 assisted the petitioner/Surajit Chatterjee in labour/industrial dispute matters during the period from November, 2017 to February, 2018 and thereafter she was deputed to assist other legal officers of the company. There was no interaction between the petitioner/Surajit Chatterjee and the respondent no.2 on any issue post February, 2018.

4.2 The present FIR was lodged on the basis of false and frivolous complaint made by the respondent no.2 with *malafide* intention. The respondent no.2 has not made any specific allegations of harassment against the petitioner in the FIR. The respondent no.2 has made false and frivolous FIR after 06 months of leaving the company. No charge-sheet has been filed by the Investigating Officer. The Internal Complaints Committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 considered the copy of FIR received on 04.12.2018 and after the detailed inquiry has exonerated the petitioner/Surajit Chatterjee vide Final Report dated 19.08.2019.

4.3 The respondent no.2 besides other facilities was also given Rs.15,000/- per month as stipend. The respondent no.2 was also visiting the

empanelled lawyers of the company and also participated in the legal conferences.

4.4 The respondent no.2 used to sit at the third floor along with other trainees whereas the petitioner/Surajit Chatterjee used to sit on first floor of the Vasant Kunj Office of MSIL. The petitioner/Surajit Chatterjee was not aware when the training of the respondent no.2 got concluded in MSIL as he left the Company on 20.06.2018. The respondent no.2 during her training period with the petitioner had never reported/complained about any unwelcoming behavior, sexual harassment or any other harassment qua the petitioner/Surajit Chatterjee. The relation of petitioner/Surajit Chatterjee with respondent no. 2 was strictly professional and only related to the work. No specific allegations were made against the petitioner/Surajit Chatterjee.

4.5 An anonymous complaint was filed at the National Commission of Women (NCW) against the petitioner/Surajit Chatterjee on 20.10.2018 and other employees of MSIL regarding the alleged sexually harassment caused to the respondent no. 2 along with other employees. The Chairman, MSIL also received an anonymous e-mail complaint on 20.10.2018 on similar lines. The respondent no.2 in connivance with some mischievous ex-employees and employees of MSIL got lodged a false, frivolous and

motivated FIR on 01.12.2018 without substantiating any allegation against the petitioner. The respondent no.2 on 10.01.2019 appeared before the Internal Complaints Committee after repeated reminders and multiple follow ups.

4.6 The petitioner/Surajit Chatterjee fully cooperated in the proceedings conducted by the Committee. The respondent no.2 vide an e-mail sent on 07.05.2019 stated that she does not wish to pursue the matter with Internal Complaints Committee and other authorities and requested to withdraw the complaint. However, Internal Complaints Committee proceeded with the enquiry and adjudicated upon the matter based on the pleadings and other materials including statement of witnesses. The petitioner was exonerated by the Committee vide Final Report dated 19.08.2019. The present FIR is an afterthought and motivated. It is prayed that FIR bearing no.594/2018 be quashed.

5. The respondent/State filed the Status Report wherein it is stated that the present FIR bearing no.594/2018 was got registered on the basis of complaint made by the respondent no.2 under sections 354A/506/34 IPC regarding the sexual harassment at workplace as well other related harassment. It is alleged by respondent no.2 that the petitioner/Ashish

Chauhan used to stare at her in a sexually offending manner, making gestures over her and also used to talk with co-accused Archit Ashwani regarding her dressing and physical aspects. The petitioner/Ashish Chauhan and Archit Ashwani also tried to touch her on number of occasions without her consent. The statement of the respondent no.2 was also recorded under section 164 of the Code wherein the respondent no.2 made allegations against the petitioner/Surajit Chatterjee regarding the sexual harassment. The petitioner/Surajit Chatterjee did not join the investigation. The exoneration in Internal Complaints Committee proceeding of the department may not be taken as ground for quashing of criminal proceeding. It is stated that the present petitions be dismissed.

6. Mr. Vikas Pahwa, learned Senior Counsel for the petitioner in W.P.(CRL) 2802/2019 advanced arguments and also submitted the written arguments. It is primarily argued that the criminal prosecution cannot be continued on the same allegations after independent Statutory Committee has exonerated the petitioner. The respondent no.2 did not cooperate with the Internal Complaints Committee despite several reminders and follow ups and sole purpose of the respondent no. 2 was to harass the petitioner in connivance with others employees/ex-employees of the company. No prima

facie case is made out against the petitioner. The reliance is placed on **Ashoo Surendranath Tewari V CBI & another**, (2020) 9 SCC 636, **Radheshyam Kejriwal V State of W. Bengal & another**, (2011) 3 SCC 58 and **P.S. Rajya V. State of Bihar**, (1996) 9 SCC 1.

7. Ms. Sonal Chauhan, counsel for the petitioner in W.P.(CRL) 3005/2019 argued that Internal Complaints Committee after a thorough investigation exonerated the petitioner/Surajit Chatterjee from charges made by the respondent no. 2 and stated that, ICC could not establish any forceful behavior from the petitioner towards the respondent no. 2. The only allegation that was made against the petitioner was that at the office the respondent no. 2 was sexually assaulted by one Surajit Chatterjee i.e. the petitioner. The respondent no. 2 has only mentioned the name of the petitioner/Surajit Chatterjee and has not described any incident and mere mentioning of sexual harassment without substantiating the allegations does not result in sexual harassment under section 354A IPC. The counsel further argued that during the internship, the respondent no.2 never complained about unwelcoming behavior from the petitioner/Surajit Chatterjee and only after six months of leaving the company, FIR was lodged. The respondent no.2 used to sit on third floor and the petitioner/Surajit Chatterjee used to sit

on the first floor. MSIL follows an open office system where there are no cubicles or cabins and every corner of the office is covered by CCTV.

7.1 The respondent no.2 did not co-operate with Internal Complaints Committee and did not produce any witnesses in favor of her complaint. There is no incriminating evidence that can prove sexual harassment or criminal intimidation by the petitioner. FIR is belated, after thought, motivated and malicious and is filed to abuse the process of law. The counsel for the petitioner has placed reliance upon the judgments of Hon'ble Supreme Court and High Courts. It is argued that FIR be quashed.

8. The Additional Standing Counsel for the respondent no. 1 argued on the basis of contents of the Status Report. It is argued that both the petitioners have caused sexual harassment to the respondent no.2 at her workplace. The findings given by the Internal Complaints Committee do not affect in any manner prosecution arising out of FIR bearing no.594/2018. It was argued that both the petitions be dismissed.

9. It is reflecting that the respondent no. 2 is a lawyer by profession. The respondent no. 2 was introduced as an intern/trainee in Legal Department-2 (litigation team) at the instance of Surender Kumar, Advisor, Legal Department-2. The respondent no. 2 sent an e-mail along with her

resume to the petitioner/Ashish Chauhan on 06.09.2017 for joining as an intern in MSIL and was asked to join the training w.e.f. 18.09.2017 vide e-mail dated 07.09.2017. The petitioner/Ashish Chauhan was working as an in-house Counsel (Manager-Legal and Special Projects). The petitioner/Surajit Chatterjee joined MSIL as a Deputy Manager in Legal Department on 07.11.2014 and left MSIL on 20.06.2018.

9.1 The respondent no. 2 joined MSIL on 18.09.2017 and was attached with the petitioner/Surajit Chatterjee to assist in labour/industrial disputes. The respondent no. 2 remained attached with the petitioner/Surajit Chatterjee during the period w.e.f. November, 2017 to February, 2018. The respondent no. 2 never remained under or attached with the petitioner/Ashish Chauhan. The respondent no. 2 concluded her training/internship with MSIL in the month of August, 2018 and was issued Training Completion Certificate dated 31.08.2018 by the Litigation Head of Legal Department-2.

9.2 An anonymous complaint was filed on 20.10.2018 at National Commission of Women against the petitioner/Ashish Chauhan and petitioner/Surajit Chatterjee and others regarding the alleged sexual harassment caused to the respondent no. 2. The Chairman, MSIL also

received similar complaint through e-mail on 20.10.2018. Thereafter the respondent no. 2 got registered the present FIR bearing no. 594/2018 dated 01.12.2018 wherein petitioners and others were implicated. The Internal Complaints Committee was constituted under Sexual Harassment for Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 wherein the respondent no. 2 appeared on 10.01.2019. The respondent no. 2 vide e-mail sent on 07.05.2019 stated that she did not wish to pursue her complaint with Internal Complaints Committee and requested to withdraw the complaint. However, Internal Complaints Committee proceeded with the enquiry and exonerated the petitioner/Ashish Chauhan and the petitioner/Surajit Chatterjee after conclusion of the proceedings vide Final Report dated 19.08.2019.

10. The learned Senior Counsel for the petitioner/Ashish Chauhan and the learned counsel for the petitioner/Surajit Chatterjee primarily argued that the criminal prosecution cannot continue on the same allegation particularly after Internal Complaints Committee constituted under the statute has exonerated the petitioner/Ashish Chauhan and the petitioner/Surajit Chatterjee vide Final Report dated 19.08.2019 and relied upon judgments as referred hereinabove. They also argued that the present FIR has been

registered only to harass the petitioners in connivance with other employees/ex-employees of MSIL and no offence is made out from FIR against the petitioners or any of the petitioners and argued that the present petitions be allowed.

11. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Section 4 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 deals with constitution of Internal Complaints Committee and provides that every employer of a workplace shall constitute a Committee to be known as the Internal Complaints Committee. MSIL on the basis of FIR bearing no.594/2018, constituted Internal Complaints Committee which conducted detailed enquiry and exonerated the petitioner/Ashish Chauhan and the petitioner/Surajit Chatterjee vide Final Report dated 19.08.2019. The legal issue which requires judicial consideration and assessment is that whether after exoneration vide Final Report dated 19.08.2019, the petitioner/Ashish Chauhan and the petitioner/Surajit Chatterjee are still liable to face

prosecution arising out of present FIR bearing no. 594/2018.

11.1 It was observed by the Supreme Court in **Ashoo Surendranath Tewari V CBI & another**, (2020) 9 SCC 636 that the standard of proof in a departmental proceeding being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. The Supreme Court referred **P.S. Rajya V State of Bihar**, (1996) 9 SCC 1 wherein the question before the Court was as under:-

3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission.

It was held as under:-

17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it.

23. Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues

raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.

11.1.1 The Supreme Court in **Ashoo Surender Nath Tewari** also referred **Radheshyam Kejriwal V State of West Bengal and another**, (2011) 3 SCC 581 wherein it was held as under:-

26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In **B.N. Kashyap [AIR 1945 Lah 23]** the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (AIR p. 27)

“... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.”

29. We do not have the slightest hesitation in accepting the broad

submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.

The Supreme Court after referring to various judgments culled out the ratio of those decisions in paragraph 38 as under:-

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue;

and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.

11.1.2 The Supreme Court after relying on above referred judgment held as under:-

8. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22.12.2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code.

11.2 The relevant conclusion of Final Report dated 19.08.2019 is reproduced as under:-

CONCLUSION

The members of the Committee have perused the entire statements of the Complainant, Witnesses and Respondents along with the materials placed on records by the respective parties.

Since the Complainant has not informed any date of incidents; as such, it was not viable for IC to get the CCTV footage to examine the same. Also, video footage has a specified storage time, after

which it is automatically deleted from the system. It may be noted that in the open workspace culture, any wrong behaviour could possibly have been seen by other employees or she could have informed or discussed with anyone at the workplace.

Four witnesses i.e. Mr. Brijesh Chaudhry, Mr. U.K. Sharma, Mr. R.K. Sharma and Mr. Gaurav Kaushik supported the Complainant's version as the Complainant had made similar statements to them as well. However, they had not witnessed any of the incidents, so it is hearsay.

Six witnesses i.e. Ms. Aakriti, Ms. Jayashree, Ms. Devyani, Mr. Surinder Kataria, Mr. Lokesh Pandey and Ms. Manjaree Chaudhary denied that the Complainant had told them anything. The other witnesses were not aware of any issue and could not corroborate her statement.

Hence IC could not establish any instance of physical touching or advances.

However, the IC believes that there were two very clearly demarcated groups in the Legal-2 team and atmosphere was not cordial and decorum was not maintained. IC also felt that many witnesses and Respondents were aggressive with even the IC. However, with respect to the conspiracy as alleged by Respondents and few witnesses by the ex-employees i.e. Mr. Surinder Kataria and Mr. Brijesh Choudhary along with Mr. R.K. Shanna, Gaurav Kaushik and the Complainant herself, IC was provided with no evidence to prove the same.

There seems to be a high probability that the Complainant felt pressurized and constrained as there was caucus and lack of team work, trust, and cordial relations in the Division. All Legal Department witnesses stated that there is only professional interaction and there is no personal interaction, which seems strange in such a compact group. All witnesses also stated that none of them discussed the case with each other, even though there was no advisory given to them by the IC till then. That

seems to be improbable lie and implies an atmosphere of constraint.

The final conclusions are as follows:

- 1. The IC, after evaluating the facts placed on record and no cross-examination, has not been able to establish any case of Sexual Harassment against Respondent no, 1, 2 &3 due to the lack of evidences available. Since the Complainant has already withdrawn her complaint and is no more willing to co operate and further participate in the proceedings, IC could not make out a clear conclusion with respect to Sexual Harassment.**
- 2. The IC also feels that the employee grievance redressal mechanism could have been better. As alleged by the Complainant also, if this matter had been handled with more discretion and sensitivity by the seniors at an early stage, it would not have escalated the way it did.**
- 3. The IC also observed that there were major administrative issues in respect of a formal HR process of engaging or confirming a trainee/ intern in Legal Division. Further, IC found that no mechanism existed there to impart training, fix stipend or provide feedback to interns.**

11.3 The perusal of Final Report dated 19.08.2019 reflects that the Internal Complaints Committee was constituted as per the mandate of section 4 of the Act on the basis of FIR bearing no.594/2018. During the enquiry, the statements of the respondent no.2, the petitioner/Ashish Chauhan, the petitioner/Surajit Chatterjee, and more than 20 witnesses were recorded. The proceedings were conducted in *camera*. The Internal Complaints Committee also received an e-mail from the respondent no. 2 on 07.05.2019

that she did not want to pursue with the complaint and it also appeared that e-mail dated 07.05.2019 was written without any force, fear and coercion. The Internal Complaints Committee despite the e-mail dated 07.05.2019 preferred to proceed with the enquiry arising out of the FIR bearing no.594/2018 and gave the Final Report dated 19.08.2019 on merits although the respondent no.2 did not produce herself for cross-examination due to the reasons best known to her. The Final Report dated 19.08.2019 was given on merits and in the said enquiry, all the facts as mentioned in the FIR were investigated and enquired into. The issues in the proceedings conducted by the Internal Complaints Committee and in present criminal prosecution are identical and in conduction of enquiry/investigation by the Internal Complaints Committee, the provisions of the Act were duly complied with and have not been contravened. In these circumstances, there is a force in the arguments advanced by the learned Senior Counsel/counsel of the petitioners that the criminal proceedings/prosecution arising out of FIR bearing no. 594/2018 cannot be continued particularly, when the petitioners were exonerated by the Internal Complaints Committee vide Final Report dated 19.08.2019. The proceedings arising in pursuance of FIR bearing no.594/2018 cannot be sustained in the law. If the investigation/prosecution

in pursuance of FIR bearing no. 594/2018 is allowed to be continued then it shall be an abuse of process of law.

12. The learned Senior Counsel/counsel for the petitioners also argued that the allegations as made in FIR bearing no. 594/2018 are false and even they are admitted to be correct then no offence under sections 354A/506 IPC is made out. Section 354A IPC deals with sexual harassment and punishment for sexual harassment. It reads as under:—

354A. Sexual harassment and punishment for sexual harassment—

(1) A man committing any of the following acts--

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 503 IPC defines criminal intimidation. Section 506 IPC provides punishment for criminal intimidation.

12.1 The perusal of FIR bearing no. 594/2018 reflects that it was got registered on 01.12.2018 while the respondent no.2 left MSIL in the month of August, 2018. It reflects that the FIR bearing no.594/2018 was got registered much after leaving of MSIL by the respondent no.2. The respondent no.2 has made only general allegations without any specific detail. The respondent no.2 mentioned that the petitioner/Ashish Chauhan used to stare her in sexually offending manner by making gestures at her and used to pass lewd comments about her dressing and physical aspects but these allegations are without any specification. The respondent no. 2 did not make any allegation in FIR bearing no. 594/2018 but as per the Status Report, the respondent no.2 made allegation against the petitioner/Surajit Chatterjee regarding the sexual harassment in statement recorded under section 164 of the Code. If all the allegations as made by the respondent no.2 are taken to be true even then, no offences under sections 354A/506 IPC are made out.

12.2. The Supreme Court in **State of Haryana V Ch. Bhajan Lal**, (1992) Supp 1 SCC 335 has laid down guidelines for the High Courts under which inherent powers under section 482 of the Code can be exercised which are as under:-

8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible kinds of cases wherein such power should be exercised:

- (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;**
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;**
- (c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;**
- (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;**
- (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;**
- (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;**

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

13. The Supreme Court continuously observed that the extraordinary power under section 482 of the Code should be exercised sparingly and with great care and caution and can be used to prevent abuse of the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case. Section 482 saves the inherent power of the High Court and reads as follows:-

Section. 482. Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

13.1 The Supreme Court in **Sushil Suri V Central Bureau of Investigation and another**, (2011) 5 SCC 708, considered the scope and ambit of the inherent jurisdiction of the High Court and observed as under:-

16. Section 482 Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under Code of Criminal Procedure; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists.

14. If the consequential proceedings arising out of FIR bearing no. 594/2018 are allowed to be continued, it will be misuse of power and exercise in futility. In view of above discussions, the present petitions are allowed and FIR bearing no. 594/2018 registered at P.S. Vasant Kunj (North) under sections 354A/506 IPC is quashed along with consequential proceedings including judicial proceedings qua the petitioner/Ashish Chauhan (petitioner in W.P.(CRL) 2802/2019 and the petitioner/Surajit Chatterjee (petitioner in W.P.(CRL) 3005/2019).

15. The petitions bearing no. W.P.(CRL) 2802/2019 and W.P.(CRL) 3005/2019 along with pending applications, if any, stand disposed of.

(SUDHIR KUMAR JAIN)
JUDGE

JANUARY 25, 2023
j/sd